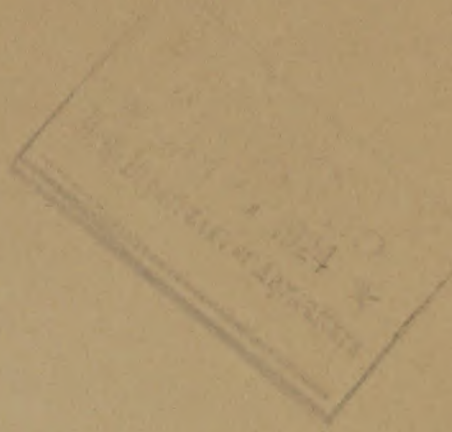


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NATIONAL FOREST MANUAL

TRESPASS

FOREST SERVICE

U.S. DEPARTMENT OF AGRICULTURE

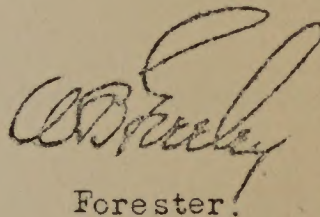
December 15, 1923.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
WASHINGTON

December 15, 1923.

The trespass section of the National Forest Manual, as recently revised, was approved October 29, 1923, by the Secretary of Agriculture and is now issued in mimeographed form for the guidance of Forest officers and the public. It is quite probable that a considerable period will elapse before it can be published in permanent printed form.

These revised regulations and instructions supersede all previous regulations and instructions for like purposes and are now in full force and effect.


Forester.

(E) Building a camp fire on those portions of any National Forest which have, with the approval of the district forester, been designated by the respective supervisors thereof without first obtaining a permit from a forest officer.

(F) Using steam engines or steam locomotives in operations on National Forest lands under any timber-sale contract or under any permit, unless they are equipped with such spark arresters as shall be approved by the forest supervisor, or unless oil is used exclusively for fuel.

(G) Disturbing, molesting, interfering with by intimidation, threats, assault, or otherwise, any person engaged in the protection and preservation of a National Forest.

(H) Smoking during periods of fire danger publicly announced by the District Forester upon such areas as may be designated by him, which may include roads and trails and improved camping grounds but shall not include improved places of habitation.

(I) Going or being upon those portions of the National Forests which may be designated by the District Forester as areas of fire hazard, except with permit issued by the local Forest officer, but no permit shall be required of any actual settler going to or from his home.

Rewards.

REG. T-2. Hereafter, provided Congress shall make the necessary appropriation or authorize the payment thereof, the Department of Agriculture will pay the following rewards:

First. Not exceeding \$500 and not less than \$100 for information leading to the arrest and conviction of any person, in any United States court, on the charge of willfully and maliciously setting on fire, or causing to be set on fire, any timber, underbrush, or grass upon the lands of the United States within a National Forest.

Second. Not exceeding \$300 and not less than \$25 for information leading to the arrest and conviction of any person, in any United States court, on the charge of building a fire on lands of the United States within a National Forest, in or near any forest timber or other inflammable material, and leaving said fire before the same has been totally extinguished.

Third. All officers and employees of the Department of Agriculture are barred from receiving reward for information leading to the arrest and conviction of any person or persons committing either of the above offenses.

Fourth. The Department of Agriculture reserves the right to refuse payment of any claim for reward when, in its opinion, there has been col-

lusion or improper methods have been used to secure the arrest and conviction thereunder, and to allow only one reward where several persons have been convicted of the same offense or where one person has been convicted of several offenses, unless the circumstances entitle the claimant to a reward on each such conviction.

These rewards will be paid to the person or persons giving the information leading to such arrests and convictions upon presentation to the Department of Agriculture of satisfactory documentary evidence thereof, subject to the necessary appropriation, as aforesaid, or otherwise, as may be provided by law.

Applications for reward, made in pursuance of this notice, should be forwarded to the Forester, Washington, D. C.; but a claim will not be entertained unless presented within three months from the date of conviction of an offender.

In order that all claimants for reward may have an opportunity to present their claims within the prescribed limit, the department will not take action for three months from date of conviction of an offender.

Fire Trespass Policy

The principal means of impressing the public with its duty to exercise care with fire is promptly to start criminal proceedings against every trespasser who it is reasonable to expect will be convicted upon the evidence available. Therefore, when a fire trespass occurs, and there appears to be sufficient evidence to secure a conviction, criminal proceedings should immediately be initiated for all violations of Sections 52 or 53 of the Criminal Code (Act of March 4, 1909), or of Regulation T-1, or of the criminal code of the State in which the trespass occurs. However, when the trespass is the result of simple negligence and in no way enriches or benefits the trespasser, and payment by the trespasser of the estimated damages sustained by the Government will clearly constitute an adequate penalty, civil action alone will suffice. The collection of civil damages from the trespasser will, however, not be an adequate penalty, irrespective of the amount involved, if the trespass is malicious or the result of gross carelessness. In such cases both civil and criminal action should be initiated except that civil action should ordinarily not be recommended when the damage involved is less than \$50 and the trespasser has declined or failed to make voluntary settlement. When there is insufficient evidence to secure a conviction in any such case punitive damages may properly be demanded in addition to actual damages. But if both forms of action are resorted to punitive damages should not be demanded, since a penalty will be imposed by the court if a conviction is obtained in the criminal proceedings.

It may often happen that the act of trespass violates both the State fire law and the Federal law and regulation, thus making it possible to prosecute the trespasser in either a State or Federal court. As a rule expediency will determine in what court the trespasser should be prosecuted, it perhaps being necessary to vary the policy and procedure in the

several States, owing to differences in their fire laws. Since it is not practicable to cover this subject adequately in the Manual, the district foresters will definitely indicate, for the guidance of field officers, in either the district law enforcement circular or a special letter of instructions, the procedure to be followed and class of cases prosecuted in State courts.

Setting Fire on Public Lands.

Section 52 of the criminal code (act of Mar. 4, 1909), provides a fine of not more than \$5,000, or not more than two years' imprisonment, or both fine and imprisonment, for willfully setting on fire or causing to be set on fire any timber, underbrush, or grass upon the public domain or for leaving or suffering a fire to burn unattended near any timber or other inflammable material. (The term "public domain" as used in this act means any land owned by the United States.)

Failing to Extinguish Fires on Public Lands.

Section 53 of the same act provides a fine of not more than \$1,000, or not more than one year's imprisonment, or both fine and imprisonment, for failure to totally extinguish a fire built in or near any forest, timber, or other inflammable material upon the public domain before leaving it.

State Fire Laws.

In many instances criminal prosecution under the State laws may be advisable, particularly when such laws provide an adequate penalty and there is reason to believe that effective cooperation may be expected from the State officials concerned. Such prosecutions must necessarily be conducted in the State courts and by State authorities with such assistance, however, as may be rendered by Forest officers or the district assistant to the Solicitor. The procedure to be followed in this class of cases will be fully covered in the district law enforcement circular or in special instructions from the district forester.

Action - Arrest

When a fire occurs, the most important consideration is to put it out. However, when there is evidence that a trespass has been committed the Forest officer discovering the fire must take every reasonable precaution to protect such evidence as may be on the ground and as soon as possible make a thorough investigation with a view to the apprehension and prosecution of the trespasser. He should not content himself with conjectures, but must secure affidavits from witnesses as soon as it appears probable that a trespass has occurred. If there is reason to suppose the offender will escape the Forest officer should arrest or secure a warrant for his arrest in accordance with the instructions given under "Criminal Cases."

Collection of Civil Damages

In fulfillment of its duty as custodian of the National Forests the Forest Service is obliged to take steps to recover from the person legally liable, the appraised damage to National Forest resources, plus any funds expended by it on account of every fire resulting from negligence. No part of the damages legally due the United States may be waived by a Forest officer on the ground that payment in full will prove a hardship to the trespasser or for the reason that the trespasser has in no way been enriched or benefited by the trespass.

An employer is civilly liable for the trespasses of his employees if negligently committed by them in the course of their employment. The fact that the employer may have instructed his employees to exercise care with fire and employed only those he believed to be trustworthy can not in any way lessen his liability. Likewise civil damages can not be mitigated on the ground that the person liable never before committed a trespass on the National Forests. In brief, if a person is liable to the United States for a certain ascertained loss, he is liable for all of it. On the other hand, if he is not legally liable for the loss occasioned by his acts, no amount whatever can properly be charged against him. When liability is clearly established civil action in the courts will be recommended unless the trespasser within a reasonable time voluntarily settles. Civil action in itself does not bar criminal prosecution for the trespass.

Accidental Fire Trespass.

In cases where a fire, accidentally started on privately owned lands, spreads over National Forest lands after all reasonable precautions or preventive measures have been taken; or where a fire accidentally is started upon or spreads over National Forest lands, the United States can not ordinarily recover any damages whatsoever.

However, this is not universally true, since in some States, by statute, individuals, and companies, particularly railroad companies, are made liable in any event for the damage done. Therefore, all such cases should be fully reported as outlined on Form 874-20 in order that the assistant to the solicitor may determine the extent of the liability, if any.

Report

The report will be prepared as soon as possible after an investigation of the cause of the fire is made and the required evidence and data collected. When civil damages are involved a complete report will be prepared, with a view to court action, in accordance with Form 874-20, even though it seems probable that the trespasser may make a voluntary settlement. Fire trespass involves rather difficult considerations of damage to young growth, soil productivity, forage, etc. The detail of forest officers for the determination of these damages should be made with this in mind. The value of material damaged or destroyed, particularly of young

growth, should be determined in accordance with the "Standard Instructions for the Determination of Fire Damages," issued by the Forester. Instructions as to salvage of timber are also given in that circular. The complete report is submitted to the supervisor. Additional information as to the preparation of reports is given under "Procedure and Preparation of Reports."

In criminal fire trespass a complete report in accordance with Form 874-20 will be forwarded to the District Forester only in the following classes of cases:

- (1) When information and advice or the assistance of the district assistant to the solicitor is required by the supervisor, and such report is necessary to a satisfactory understanding of the case.
- (2) When it is desirable to secure action through the Attorney General.
- (3) When civil action is also required, except cases within the supervisor's authority that are voluntarily settled at once by the trespasser.

In other criminal cases the district forester will be furnished a memorandum report of the material facts, the amount of damage, if any, caused by the fire, and the action taken.

Procedure.

After receipt of report from the supervisor the District Forester will act in accordance with the procedure outlined under "Settlement of trespass cases." If a fire burns over portions of two or more National Forests, action will be taken by the district forester after the reports and recommendations from all the supervisors concerned are received. In the district office fire-trespass cases will be handled by the office of operation with any necessary advice from the offices of forest management and grazing respectively, as to the valuation of timber, young growth, or forage, damaged or destroyed. In Washington they will be handled by the Branch of Operation with any necessary advice and information from the Branches of Forest Management and Grazing.

Camp Fire Permits.

All or any portion of a National Forest may be designated as an area on which the building of camp fires is not allowed without first obtaining a permit from a forest officer. Areas will be so designated by the forest supervisor only after approval by the district forester. Due notice must be given the public as to the permit requirement and where it may be obtained.

PROPERTY TRESPASS.

REG. T-3. The following acts are prohibited on lands of the United States within a National Forest:

(A) The willful tearing down or defacing of any notice of the Forest service.

(B) The going or being upon such lands with intent to destroy, molest, disturb, or injure property used, or acquired for use, by the United States in the administration of the National Forests.

(C) Destroying, molesting, disturbing, or injuring property used, or acquired for use, by the United States in the administration of the National Forests.

(D) Mutilating, defacing, or destroying objects of natural beauty or of scenic value on such lands.

(E) Damaging and leaving in a damaged condition roads or trails which are under the jurisdiction of the Forest Service.

(F) Entering, occupying or using without permission from a forest officer, any building of the United States used by the Forest Service, in connection with the administration of a National Forest, except in case of emergency to prevent suffering.

(G) Leaving any building of the United States used by the Forest Service in connection with the administration of a National Forest without placing the same in a condition as sanitary as when entered.

Rewards.

REG. T-4. Hereafter, unless otherwise ordered, provided Congress shall make the necessary appropriation, or authorize the payment thereof, the Department of Agriculture will pay not exceeding \$100 and not less than \$25 for information leading to the arrest and conviction, in any United States court, of any person charged with destroying or stealing any property of the United States within the custody of the Forester, Forest Service, United States Department of Agriculture.

This reward will be paid to the person or persons giving the information leading to such arrest and conviction upon presentation to the Department of Agriculture of satisfactory evidence thereof, subject to the necessary appropriation as aforesaid, or otherwise as may be provided.

Officers and employees in the Department of Agriculture are barred from receiving such rewards.

The Department of Agriculture reserves the right to refuse payment of any claim for reward when, in its opinion, there has been collusion or

improper methods used to secure arrest and conviction, and to allow only one reward where several persons have been convicted of the same offense or where one person has been convicted of several offenses, unless the circumstances have entitled the person to a reward on each conviction.

Applications for reward, made in pursuance of the above notice, should be forwarded to the Forester, Washington, D. C.; but no claim will be considered unless presented within three months from the date of conviction of an offender. In order that all claimants for rewards may have opportunity to present their claim within the prescribed limit, the department will not take action with respect to rewards for three months from the date of the conviction of an offender.

Statutory Penalties for Property Trespass.

Section 46 of the criminal code (act of March 4, 1909), provides that whoever robs any person of personal property belonging to the United States, or feloniously takes and carries away the same, shall be fined not more than \$5,000, or imprisoned for not more than ten years, or both fined and imprisoned.

Section 47 of the same act provides that whoever embezzles, steals, or purloins any money, property, record, voucher, or other valuable thing whatever of the United States, shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

The same act also provides in Section 48 that whoever knowingly receives, conceals or aids in concealing, or has or retains in his possession with intent to convert to his own use or gain, any of the kinds of property of the United States mentioned in the preceding paragraph, which has theretofore been embezzled, stolen, or purloined by any other person, shall be fined not more than \$5,000, or imprisoned not more than five years, or both; and such person may be tried either before or after the conviction of the principal offender.

Damage to or Destruction of Telephone Lines.

Section 60 of the act of March 4, 1909, makes the following provision relative to the injury or destruction of Government telephone lines:

"Whoever shall willfully or maliciously injure or destroy any of the works, property, or material of any telegraph, telephone, or cable line or system, operated or controlled by the United States, whether constructed or in process of construction, or shall willfully or maliciously interfere in any way with the working or use of any such line or system, or shall willfully or maliciously obstruct, hinder, or delay the transmission of any communication over any such line or system, shall be fined not more than \$1,000 or imprisoned not more than three years, or both."

Action--Recovery of Forest Service Property.

Forest officers, as agents of the Government may, without further instructions, seize Forest Service property wrongfully taken wherever it may be found, but should be extremely careful that the identification of the property is complete. Seizure may be made only when it can be done peaceably and when necessary to prevent Government property from being sold, damaged, destroyed, or removed beyond recovery.

Investigation

Trespass against property of the United States will usually result in litigation, either civil or criminal. Therefore, the forest officer who investigates a trespass of this character, must make every reasonable effort to gather and submit with his report, in the form of affidavits, if possible, sufficient and convincing legal evidence to insure success in court.

Report

Forest officers will prepare a full report in accordance with the outline given on Form 874-20 and forward it to the supervisor. The report will state specifically the kind and value of the property stolen, damaged, or destroyed; the circumstances of the trespass; and the action, if any, taken for the recovery or protection of the property of the Government wrongfully taken or destroyed.

Procedure

If the supervisor is not authorized to settle the case and he is convinced that he has collected sufficient evidence to warrant further action he will transmit the report with his comments and recommendations to the district forester. The detailed procedure for handling the report after it reaches the supervisor will be found under "Settlement of Trespass Cases." In the district forester's or Forester's office property trespass will be handled by the office or Branch of Operation.

First-Offense Property Trespass.

First-offense property trespass cases may, if the facts warrant, be settled by the return of the property involved. So far as applicable the instructions under "First-Offense Timber Trespass" will govern the settlement of this class of cases.

TIMBER TRESPASS.

REG.T-5. The following acts are prohibited on lands of the United States within National Forests:

(A) The cutting, killing, destroying, girdling, chipping, chopping, boxing, injuring, or otherwise damaging, or the removal, of any timber or young tree growth, except as authorized by law or regulation of the Secretary of Agriculture.

(B) The damaging or cutting, under any contract of sale or permit, of any living tree before it is marked or otherwise designated for cutting by a forest officer.

(C) The removal from the place designated for scaling, measuring, or counting of any timber cut under contract of sale or permit until scaled, measured, or counted, and stamped by a forest officer.

(D) The stamping, except by a forest officer, of any timber belonging to the United States, either with the regulation marking tools or with any instrument having a similar design: Provided, That timber lawfully cut from public land which is subsequently included within a National Forest may be removed within a reasonable time after the inclusion of such land in a Forest: Provided further, That the term "timber" as used in this regulation shall be deemed and taken to mean trees of a character or sort that may be used in any kind of manufacture or the construction of any article or for fuel.

Timber Depredations on Public Lands.

By section 49 of the criminal code (act of Mar. 4, 1909), the cutting of, or causing or procuring to be cut, or the wanton destruction of, or causing to be wantonly destroyed, any timber growing on the public lands of the United States, or the removal, or causing the removal, of any timber from such lands is a criminal offense punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or by both fine and imprisonment. It is further provided, however, that:

"Nothing in this section shall prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking timber necessary to support his improvements, or the taking of timber for the use of the United States. And nothing in this section shall interfere with or take away any right or privilege under any existing law of the United States to cut or remove timber from any public lands."

Timber Depredations on National Forest Lands.

Section 50 of the criminal code (act of Mar. 4, 1909), as amended by section 6 of the act of June 25, 1910 (36 Stat., 857), makes it a criminal offense punishable by a fine of not more than \$500 or imprisonment for not more than one year, or by both fine and imprisonment, to unlawfully cut, or aid in unlawful cutting, or to wantonly injure or destroy, or procure to be wantonly injured or destroyed, any tree growing, standing, or being upon any land of the United States which has been reserved or purchased for any public use.

Boxing, etc., Timber for Turpentine, etc.

By section 51 of the criminal code (act of Mar. 4, 1909), the cutting, chipping, chopping, or boxing of any tree upon National Forest and other Government land, or upon any land covered by or embraced in any unperfected settlement, application, filing, entry, selection, or location made under any law of the United States for the purpose of obtaining from such tree any pitch, turpentine, or other substance, or knowingly encouraging, causing, procuring, or aiding in such cutting, chipping, chopping, or boxing, or buying, trading for, or in any manner acquiring the product so obtained with knowledge that it was unlawfully obtained is a criminal offense punishable by a fine of not more than \$500, or imprisonment for not more than one year, or by both fine and imprisonment.

Action to Stop Trespass.

When a forest officer discovers what he believes to be a trespass he should immediately ascertain the exact location and status of the land involved, making sure that it is within the boundary of the Forest and upon land under the jurisdiction of the Forest Service. To do so it may be necessary to locate the nearest Government corner, run a survey, and obtain the status of the land from some authentic source. If satisfied that a trespass is being committed, he will promptly serve written notice upon the trespasser, in the presence of witnesses if possible, to discontinue the trespass, and record in his notebook the place, with names and addresses of those present, and the day and hour of the notification.

Threatened Trespass.

When a forest officer discovers that National Forest timber is threatened with trespass, and no warning will serve to restrain the trespasser, an injunction may be necessary to protect National Forest interests. The procedure to obtain an injunction is outlined under "Settlement of trespass cases."

Investigation of Timber Trespass.

Timber trespass on National Forests will be handled exclusively by the Department of Agriculture, except such trespasses as have hitherto been reported upon or are now being investigated or prosecuted by the Department of the Interior, and upon request from officials of that department forest officers shall render all possible assistance in such investigation or prosecution.

Timber Cutting on Unperfected Claims.

The cutting of timber upon an unperfected claim beyond the extent necessary for its actual development, or for uses not consistent with the purpose for which the claim was initiated, or the cutting of timber from one mining claim for use upon another where such use does not tend directly to develop the claim from which the timber is cut will be reported as timber

trespass in accordance with the procedure prescribed under "Settlement of trespass cases." Report should be made at the same time upon the claim, using the outline on Form 654 or 655, and the status of the claim as indicated by the report will determine the action which will be taken to prevent, settle, or prosecute the trespass.

Seizure Defined.

Seizure, or recaption, is the right of a person to retake his property in a peaceable manner wherever he finds it. Since the United States has the same common-law rights and remedies as an individual it may, through its agents, exercise the same right of seizure or recaption as an individual.

Seizure, Authority of Forest Officers to Make.

Forest officers as agents of the Government may, when necessary to prevent loss, without further instructions seize timber cut in trespass wherever found when it can be done peaceably, even though it may be upon patented land at the time. However, the right of seizure should be exercised with extreme care, since mistaken zeal in this regard may lead to serious complications or subject the Forest Service to the charge of arbitrary action. In determining the advisability of exercising the right of seizure, forest officers should bear in mind that if the Government seizes the material cut in trespass, it can not later in a civil action recover the value of such material from the trespasser.

If the case has proceeded to suit and is in the hands of the Department of Justice, seizure will be made only under instructions from the United States attorney handling the case. Any developments in such a case which render immediate seizure necessary to prevent loss to the Government should be reported by wire to the district office.

Seizure of Manufactured Products.

Timber cut in trespass may be seized, although manufactured into lumber and in the hands of an innocent purchaser and upon patented land. It is within the right of the United States to seize buildings or other improvements, either on Government or patented land, when such improvements are constructed wholly or in part from timber cut in trespass; but this drastic action will be taken only as a last resort to save the United States from loss, and then only on definite instruction from the district forester.

Seizure of Mixed Timber.

Where a trespasser wrongfully mingles Government timber or lumber with his own, either the whole mass may be seized and held until the amount lawfully owned by the claimant is proved by him, or if the amount taken from the Government land is known, an equal amount of the commingled mass may be seized.

Seizure--Posting Trespass Material.

The forest officer making a seizure will post notices of seizure on the material seized in sufficient numbers to identify unmistakably all material covered by the seizure. The trespasser and any witnesses to the act should be notified of its significance and warned against the removal of the property under seizure. If there is danger of the theft of the material, pieces may be marked in other ways for the purpose of identification, in addition to the notices of seizure.

Seized material will not be stamped "U. S." until the case is settled in favor of the Government and the material is to be released. When the material is stamped the notices of seizure will be removed.

Sale of Seized Material.

Forest products seized under the foregoing instructions will be disposed of in accordance with Regulation S-21, and the instructions thereunder.

Measure of Damages.

The willfulness or innocence of a trespass determines whether the value of the material in the condition where found or the difference between the value of the trespass area immediately before and after the trespass occurred, will be the basis for assessing the damages due the United States. Forest officers must be extremely careful, therefore, to secure all evidence bearing on this point, and their reports must clearly show into which class the trespass falls. If, for instance, no settlement is made in a trespass case, and it becomes necessary to institute suit to obtain damages, evidence of reliable witnesses will be needed to prove whether the trespass was innocent or willful, and such evidence, in affidavit or other form, should accompany the report. In every case, whether considered by the forest officer innocent or willful, the safer course is to secure and report the values both on the basis of innocent and willful trespass.

Innocent and Willful Trespass.

If, at the time the cutting was done, the trespasser, after the exercise of due diligence to ascertain from official sources the ownership of the land or his rights therein, was unaware that he was not lawfully entitled to the timber, the act will be considered an innocent trespass. If cutting occurs beyond the boundaries of patented land through bona fide mistake, or trespass has been committed on account of any other bona fide error of fact or in innocence of the rights of the United States, the trespass will be considered an innocent one. Where these conditions do not exist, the trespass will be considered willful. While the men who do the actual cutting may legally be held for the trespass, ordinarily it is advisable, particularly in civil cases, to proceed against the corporation, company, or individual by whose direction and for whose benefit the cutting was done. In civil cases the employer is liable for the willfulness of the

employee, if he knew of the trespass and took no means to stop it, or, if after the trespass was committed, he knowingly approved it or adopted it by receiving the fruit of the trespass, or whenever he employed persons to do the cutting knowing them to be careless, reckless, and unreliable.

In Innocent Cases.

When the trespass is innocent, the measure of damages will be the difference between the value of the trespass area immediately before and after the trespass occurred, which damage is ordinarily represented by the stumpage value of the timber cut. Any damage sustained by the United States in addition to the actual loss of stumpage should also be included as an item of damage.

Innocent Purchasers.

Where the purchaser of timber cut in innocent trespass is held for damages the measure will be the same as in innocent cases. If the timber is purchased from a willful trespasser, without knowledge of the trespass, the value will be determined as of the time of such purchase.

In Willful Cases.

When the trespass is willful, the measure of damage will be the value of the timber in its condition when and where found. If, when a willful trespass is discovered, the trees are felled, the assessed damage will be the stumpage plus the cost of felling; if they are cut into logs, the cost of bucking will be added, and if found at the mill the cost of both bucking and hauling will be added. The current value of the lumber will be the basis for assessing damages if the logs have passed through the mill.

Willful Purchasers.

Where the purchaser of timber cut in trespass is held for damages, the measure will be the value of the material at the time and place it is found if it was purchased from a willful trespasser with full knowledge that the timber was cut in trespass.

Innocent Turpentine Trespass.

When turpentine is unintentionally extracted from National Forest timber the trespasser will be required to settle on a cup basis at the established commercial rate existing on the Forest concerned at the time the trespass was committed. In addition to settlement for the cups placed, the trespasser will be required to pay for all damage resulting to the timber from the trespass operations.

Unless the trespasser signifies his intention to settle voluntarily, the report will include a statement showing the amount of crude turpentine extracted and its value in the woods immediately after extraction. If

voluntary settlement on a cup basis can not be secured the case will be referred to the Department of Justice for the institution of civil proceedings for the recovery of the value of the crude turpentine immediately after extraction.

Willful Turpentine Trespass.

When a turpentine trespass is intentionally committed on National Forest land the measure of damages will be the value of the product extracted in its condition when and where found, plus any damage resulting to the timber from the operations of the trespasser.

Waste and Damage to Forest.

If, in addition to the cutting and removal of Government timber, the trespasser, by careless felling or logging, has done avoidable damage to young growth or timber left standing, an estimate of the money value of this loss should be made and included in the assessed damages. Merchantable timber wasted in high stumps or longtops, or left in the woods, should be included in the scale.

Stump Scales.

In making a stump scale the total log length taken from each tree should be measured. In most cases where the trespass is not over 2 years old the indentation in the ground can be seen where the butt struck when the tree fell. From that point, which is often several feet from the stump, to the top, the direction of which can be determined by the undercut on the stump, the total log length can be measured. This should be divided into logs according to the taper table given under "Instructions to scalers," in the Manual on Scaling National Forest timber, and the top diameter of each log ascertained from the same table. The scale for each log may then be obtained from the Decimal C scale stick or the scale table in the Manual. The merchantable portion left in the top and in high stumps should be scaled and noted separately. After scaling each tree, the top of the stump and the butt of the top should be stamped "U. S."

Use of Volume Tables.

In cases where the tops can not be identified or have been moved or destroyed, the scale may be obtained from a volume table (if one is available for the locality and species) by reducing the diameter at the top of the stump to diameter breast high.

Record of Method Used.

Forest officers should use extreme care in scaling trespass timber, especially in a stump scale, and should keep complete notes on the method used, since if the case is brought into court the scale must be introduced as legal evidence.

Report.

The report, as outlined on Form 874-20, will be submitted to the supervisor. While many cases will be settled as first-offense trespasses, it is essential that they be carefully prepared so as to clearly establish the fact of trespass. If the trespass is committed under color of a claim, report should be made at the same time upon the claim, using the outline on Form 654 or 655.

The report should always include an estimate of the expense it will be necessary for the Government to incur in disposing of the slash on the cutting area if it is not properly disposed of by the trespasser. Whenever the institution of suit is necessary, and the trespasser has not properly disposed of the slash, the estimated cost of placing the cutting area in a satisfactory condition should be included as an item of damage.

Disposal of Slash before Closure.

After settlement the case will be closed when the area cut over is in a satisfactory condition. Forest officers should watch this carefully and should insist on a proper disposal of slash from the cutting area. The trespasser should understand clearly what will be required of him in this respect, and upon completing the work, the forest officer should inspect the area, and when sure that all stipulations of settlement have been fulfilled, report to the supervisor. When the supervisor receives the report that the area is in satisfactory condition he will close the case if it is within his jurisdiction. Otherwise, he will forward the report with appropriate recommendations to the district forester. When the case is closed the supervisor will notify the trespasser of the closure of the case.

Procedure.

After receipt of report by the supervisor the procedure will be in accordance with the instructions under "Settlement of trespass cases." In the district forester's or Foresters' office timber trespass cases will be handled by the office or Branch of Forest Management.

FIRST-OFFENSE TIMBER TRESPASS.

In innocent timber trespasses by parties who have not previously committed timber trespass on a National Forest, which are free from maliciousness and gross carelessness and do not involve timber exceeding \$100 in value, settlement will be effected, if practicable, on the following basis:

(a) If the person responsible for the cutting would have been granted the timber cut under the free-use regulations had he made application therefor in advance, the timber may be granted under free use, provided it has been, or will be, used for the purposes specified in the free-use regulations.

(b) If the person responsible for the cutting would not have been granted the timber cut under the free-use regulations, but would have been entitled upon application to purchase it under Regulation S-22, the proper forest officer is authorized to sell the timber to such person in accordance with the terms of Regulation S-22, provided it has been, or will be, used upon a homestead or farm for domestic purposes.

(c) If the person responsible for the cutting would not have been granted free use of the timber cut or entitled to purchase it under Regulation S-22, the proper forest officer is authorized to sell the timber to such person under the sale regulations at the usual commercial rates.

Initial Procedure.

Action by the forest officer making the report and by the supervisor in first-offense innocent timber-trespass cases, as above outlined, will be similar to that covered by "Civil cases." The supervisor should refer to his card record to determine whether the trespasser has previously committed a timber trespass.

Settlement by the Supervisor.

Supervisors may in the discretion of the district forester be authorized to settle first-offense cases in which the timber involved does not exceed \$100 in value. When so authorized the supervisor need not submit the papers to the district office for review unless he desires the advice of the district forester or the assistant to the solicitor, in which case the trespass will be handled by the district forester. The letter to the trespasser will be prepared and signed by the supervisor. The letter should contain an offer to the trespasser to make settlement under the provisions of paragraphs (b) or (c) with instructions as to the procedure necessary thereunder; will inform him upon what basis voluntary settlement will be allowed; will state that the case must be treated as a trespass and damages assessed accordingly if voluntary settlement is not made, and will warn the trespasser against future violation of the National Forest regulations. He will be informed that 15 days will be allowed within which to make voluntary settlement as indicated and that future offenses will be treated as trespass. The letter to the trespasser will be accompanied by letter of transmittal (Form 861) prepared and signed by the supervisor.

A copy of the letter to the trespasser will be sent to the proper forest officer with instructions as to the disposition of the case under paragraphs (b) or (c).

In any case coming under paragraph (a) the letter from the supervisor will inclose a free-use permit and will warn the trespassers against further violations of the National Forest regulations. A copy of such letter and permit will be sent to the proper forest officer.

Settlement by the District Forester.

First-offense cases will be referred to the district forester for settlement by supervisors who have not been authorized to settle first-offense trespass cases, or any case where there appears to be doubt. The district forester will refer the case to the assistant to the solicitor, who will prepare the letter for the signature of the district forester, requesting settlement in cases coming under paragraphs (b) and (c). The contents of the letter and other procedure is indicated under "Settlement by supervisor."

Record of Timber Trespass Cases.

A timber trespass record card (Form 618) will be made out in the supervisor's office. If the case is settled by a sale or by free use, the card will be indorsed "Settled under first-offense procedure." Cases settled by free use or sale will not be reported as trespasses in the annual report (Form 446), but will be reported in accordance with the method of settlement.

Voluntary Settlement Not Made.

If voluntary settlement is not made in first-offense timber trespass cases, the cases will be handled as outlined under "Civil cases."

Basis of Voluntary Settlement.

Cases coming within the scope of (b) will be settled on the cost of making and administering the sale of the timber involved, as set forth in Regulation S-22. Cases coming under (c) will be settled on the stumpage value of the timber, ascertained as in appraisals for timber sales. If voluntary settlement be not made in cases coming under (b) and (c), the measure of damages claimed in referring the case to the Department of Justice will be as provided "In innocent cases."

GRAZING TRESPASS.

REG. T-6. The following acts are prohibited on lands of the United States within National Forests:

(A) The grazing upon or driving across any National Forest of any live stock without permit, except such stock as are specifically exempted from permit by the regulations of the Secretary of Agriculture, or the grazing upon or driving across any National Forest of any live stock in violation of the terms of a permit.

(B) The grazing of stock upon National Forest land within an area closed to the grazing of that class of stock.

(C) The grazing of stock by a permittee upon an area withdrawn from use for grazing purposes to protect it from damage by reason of the improper handling of the stock, after the receipt of notice from an authorized forest officer of such withdrawal and of the amendment of the grazing permit.

(D) Allowing stock not exempt from permit to drift and graze on a National Forest without permit.

(E) Violation of any of the terms of a grazing or crossing permit.

(F) Refusal to remove stock upon instructions from an authorized forest officer when an injury is being done the National Forest by reason of improper handling of the stock.

Statutory Basis for Grazing Trespass

In addition to the act of June 4, 1897 (30 Stat., 35), under the authority of which the foregoing regulation was promulgated, the criminal code (act of March 4, 1909), provides in Section 56 that whoever knowingly and unlawfully breaks, opens, or destroys any fence or gate inclosing reserved lands of the United States; or whoever drives any livestock upon such lands for the purpose of destroying the grass or trees thereon; or whoever permits his livestock to enter through any such inclosure upon any such lands, where such livestock may or can destroy the grass, trees or other property of the United States, shall be fined not more than \$500, or imprisoned not more than one year, or both fined and imprisoned. This section of the code has been held to apply only to enclosed lands.

Action--Removal of Stock.

A distinction is made between permitted stock and unpermitted stock.

Permitted stock may be removed from any portion of the Forest not allotted to it, but the permit can not be canceled or the stock removed from the area allotted to it without authority from the district forester.

Forest officers may drive unpermitted stock from any portion of the Forest upon discovery of its presence, or they may allow the owner or herder a reasonable time to remove it; but if he refuses to do so the person in charge of the stock may be arrested and the stock removed from the Forest by the forest officers. (See "Criminal cases.")

The owner of trespassing stock should be ordered to remove it at once, or, if the situation is urgent, the forest officer may remove the stock in any way that does not injure it physically.

Investigation.

The circumstances of the trespass must be promptly investigated as the basis of the report, the damages estimated, the area mapped, available witnesses interviewed and affidavits secured, if possible.

Measure of Damages.

The willfulness or innocence of a trespass determines the basis of settlement.

If the trespass is an innocent one the measure of damages is the commercial value, or replacement value, of the forage, or other property consumed, destroyed, or injured.

If the trespass was committed maliciously, wantonly, or with a reckless disregard of the rights of the Government the trespasser may be required to pay a reasonable amount of exemplary or punitive damages, in addition to the actual damage sustained.

Segregation of Civil and Criminal Cases.

In cases where there is no evidence of willfulness on the part of the owner, or other principal, in connection with the trespass, but there is evidence that the trespass was committed willfully or knowingly by the herder or other employee in charge of the stock, the trespass should be segregated into two cases; the owner or principal may be held liable for the actual damage, and the herder or other employee may be prosecuted criminally.

Condonation of Trespass by Issuance of Permit,

In any case which is to be handled as a grazing trespass supervisors must not issue a grazing permit authorizing the grazing of the trespassing stock during any part of the period in which the stock were in trespass. In issuing permits for stock which have trespassed upon National Forest range care should be taken so that the permit clearly excludes the period during which the stock were in trespass and the fee figured accordingly. The issuance of a permit which covers all or a part of the period the stock were in trespass acts as a condonation of the trespass by the Forest Service, rendering it impossible to sustain civil suit for the collection of damages or criminal action for violation of the regulations.

If the owner of the trespassing stock is entitled to share in the use of the range, a permit may be issued to him for the remainder of the season; but the beginning of the permit period must not antedate the date upon which the application for permit was approved. The approval of the application by the supervisor will be considered as the termination of the trespass, and the inclusive dates during which the stock are reported in trespass should be from the date the trespass began until the date of the approval of the grazing application. If, however, the trespasser fails to complete his application by the payment of the proper fees, then the trespass period will be from the date the stock entered the Forest in trespass to the date the stock were removed from the Forest. In all cases the fee charged for the remainder of the season should be in accordance with the provisions of Regulation G-10.

Report.

After the removal of the stock the forest officer discovering the trespass will prepare a report in accordance with the outline on Form 874-20 and forward it to the supervisor.

Procedure.

After receipt of the report by the supervisor the procedure will be in accordance with the instructions under "Settlement of Trespass Cases." In the district forester's or Forester's office grazing trespass cases will be handled by the office or Branch of Grazing.

HUNTING AND FISHING TRESPASS.

REG. T-7. The following acts are prohibited on lands of the United States within National Forests:

The going or being upon any such land, or in or on the waters thereof, with intent to hunt, catch, trap, willfully disturb or kill any kind of game or non-game animal, game or non-game bird, or fish, or to take the eggs of any such bird in violation of the laws of the United States or any regulation made in pursuance thereof, or of the laws of the State in which such lands or waters are situated.

Statutes.

Prosecutions for game trespass are usually based on the violation of a State game law, or, more rarely, Regulation T-7. However, prosecution may be based on violations of any of the following Federal statutes: Act of January 24, 1905 (33 Stat., 614), establishing the Wichita Refuge; act of June 29, 1906 (34 Stat., 607), establishing the Grand Canyon Refuge; act of August 11, 1916 (39 Stat., 476), providing for the protection of game on Purchased Areas; the Migratory Bird Treaty Act of July 3, 1918 (40 Stat., 755), and all regulations thereunder. The United States criminal code, sections 84, 242 and 243 provide a penalty for unlawful hunting, capturing, or killing of wild birds, within United States bird reserves, or breeding grounds, and for the unlawful transportation in interstate or foreign commerce, of any wild animal or bird, or parts thereof, killed or shipped in violation of the law of the state where killed, or from which shipped, and for failure to show plainly on the outside of each package shipped, containing the bodies of game animals or birds, the contents of such package. The act of February 6, 1905 (33 Stat., 700), gives forest officers certain powers of arrest. It is doubtful whether this authority extends to violations of the specific statutes above mentioned. Hence before making an arrest it would be advisable for the forest officer to procure a warrant therefor. If, however, the offender is caught in the act of violating Reg. T-7 as well as one of the above statutes he may be promptly arrested for the first offense and when brought before the nearest U. S. Commissioner may be charged with the offenses actually committed.

What Constitutes Trespass.

Regulation T-7 prescribes an offense for the entering upon, or being upon, or using National Forest lands for purposes which would be in violation of Federal statutes or of the State fish and game laws. The act of pursuing or taking or killing fish or game need not actually be committed to constitute a violation of the regulation, although an act would be prima facie proof of the intention of the person or persons apprehended. This regulation gives opportunity to supplement the State procedure in preventing violations of the game laws, by bringing such offenses within the jurisdiction of Federal as well as State courts.

Authority of Forest Officers.

The source of authority of forest officers is important in circumscribing their authority as to arrests, seizures, investigations, and procedure.

The majority of offenses committed are violations of State fish and game laws and the authority of forest officers to act is derived from-- (a) their commissions as game wardens, or (b) under the regulation. In the former case their jurisdiction is prescribed by the terms of their commission. In the latter case forest officers have authority only on National Forest lands. While acting under authority of the act of February 6, 1905, their jurisdiction is limited to forest reserves (now National Forests) and National Parks.

Arrest.

Before making arrests forest officers must be certain of their authority either under Federal statute, regulation, or State law, and that they are personally legally authorized to make arrests either as assistant or deputy game wardens, or as officially qualified forest officers. They must also be certain as to the law or regulation violated. Persons arrested must be taken before the nearest United States commissioner in whose jurisdiction the offense was committed, in the event the prosecution is to be in the Federal courts, or to the properly designated State officer, usually justice of the peace, in the event the case will be tried in the State courts. Forest officers will be duly instructed by forest supervisors as to the State laws, which vary in different States.

Seizure.

In many cases it is necessary to seize as evidence guns, tackle, traps, or other devices, and fish, game or other animals, or pelts or trophies unlawfully taken. In some States special legislation or instructions of the State game warden provide for disposition or confiscation of seized material. Where there is no such provision district foresters will prescribe, on advice of the assistant to the solicitor, the disposition to be made of the material seized. Forest officers must not profit in any way by seizures or confiscations. No seizure of private property should

be made in any instance unless such property is directly connected with the offense for which the arrest is made and is required as an exhibit in the proposed prosecution.

Investigation.

After the appropriate action has been taken at the time of discovery of trespass, witnesses, if any, should be interviewed and statements or affidavits secured, if possible. The form of investigation will be governed by the circumstances of the case. In some instances it may be necessary or advisable to cooperate with or to turn the case over to the county or State game officials.

Report.

The officer discovering the offense should communicate all the facts to the supervisor as soon as possible. He should prepare a full report in accordance with the outline given on Form 874-20, and, unless otherwise directed, submit it to the supervisor.

Procedure.

Action in a given case should be brought in the court which can be most readily reached and in which most prompt and effective action can be secured.

In prosecutions under the State laws, State procedure will be followed. If the trespasser is to be prosecuted in the Federal courts, the case will be handled in accordance with the instructions under "Settlement of trespass."

In the district office hunting and fishing trespass cases will be handled by the office of grazing and the office of the assistant to the solicitor. In Washington they will be handled by the Branch of Grazing, the Office of the Solicitor, and the Office of the Secretary of Agriculture.

OCCUPANCY TRESPASS.

REG. T-8. The following acts are prohibited on lands of the United States within National Forests:

(A) Squatting or making settlement thereon, except in accordance with the act of June 11, 1906, entitled "An act to provide for the entry of agricultural lands within forest reserves."

(B) Constructing or maintaining any kind of works, structure, fence, or inclosure; conducting any kind of business enterprise or carrying on any kind of work without a permit, except as otherwise allowed by law or regulation, and except upon a claim for the actual use, improvement, and development of the claim consistent with the purposes for which it was initiated.

(C) The placing by any person, association, or corporation, without written permission from a forest officer, of stock within an inclosure designated by the Forest Service as a pasture for tourists' stock, and allowing such stock to remain in the inclosure for more than forty-eight hours in succession, or more than twice during any calendar year.

(D) Having or leaving in an exposed or insanitary condition on National Forest lands camp refuse or debris of any description, or depositing on National Forest lands or being or going thereon and depositing in the streams, lakes or other waters within or bordering upon the National Forests any substance or substances which pollute or are liable to cause pollution of the said streams, lakes, or waters.

What Constitutes Occupancy Trespass.

The use of the National Forest land without permit for any purpose for which special-use permits are required or committing any other act prohibited by Regulation T-8 constitutes occupancy trespass. Traveling, temporary camping, lawful hunting, surveying, or prospecting may be carried on without permit, and camp wood and forage for stock used in connection with such projects may be taken free of charge.

Since the United States has all the civil rights and remedies for trespass possessed by private individuals, it may bring action to recover damages resulting from trespass or breach of contract.

Violation of Sanitary Requirements.

Forest officers will enforce compliance with Regulation T-8 (D) on the part of all campers, stockmen, permittees, and other persons traveling through or occupying National Forest lands.

The supervisor should see that the notice warning the public of Regulation T-8 (D) is posted at the entrances to the Forests, and at all camping grounds and at other suitable places.

When a forest officer discovers insanitary conditions he will first request the trespasser to comply with the regulation, and if the trespasser refuses will take the necessary action to remove the nuisance and then follow the usual procedure for trespass cases.

Action to Stop Trespass.

If the trespasser is engaged in constructing any building or other structure on National Forest land, he should be notified by a written order served, if possible, in the presence of witnesses to suspend work. In aggravated cases it is within the authority of a forest officer to seize improvements constructed on National Forest land, but unless damage actually threatens the National Forest this action will not be resorted to. The forest officer should make every effort to secure satisfactory adjustment amicably. He should, if possible, interview the trespasser and induce him to discontinue the trespass or remove his improvements, allowing him a reasonable time within which to do so.

Water Power.

Whenever a person is discovered using National Forest land for water power development without a permit from the Federal Power Commission, he should be informed that such use constitutes an occupancy trespass and be required to immediately discontinue further unauthorized use of the land. A report on the trespass, including an estimate of the resulting damage to National Forest property, should without delay be prepared and forwarded through the usual channels to the Forester for transmission to the Federal Power Commission. At the same time steps should be taken to require the trespasser to pay for any damage he has caused to National Forest property. As soon as the Commission has indicated the action, if any, it wishes the Forest Service to take or assist in taking the matter will be submitted to the Solicitor for consideration if any question of law is involved or legal proceedings necessary. In handling this class of cases it will be the policy of the Forest Service to work in close cooperation with the Federal Power Commission.

Investigation.

The investigation should show the facts and circumstances of the trespass, and whether it was committed innocently or intentionally or in defiance of warnings against trespass.

Report.

The forest officer discovering the trespass will, after assuring himself of the status of the land, prepare a full report in accordance with the outline given on Form 374-20 and forward it to the supervisor.

If the trespass is committed under the color of a claim, report upon the claim should be made at the same time in accordance with the outline on Form 654 or 655.

Procedure.

After receipt of the forest officer's report by the supervisor the procedure will be as prescribed under "Settlement of trespass cases."

In the district forester's or Forester's office occupancy trespasses will be handled by the office or Branch of Lands.

First-Offense Occupancy Trespass.

Any first-offense occupancy trespass involving a use of National Forest land for which a permit would have been issued in advance of such use had it been applied for by the trespasser, may, if the facts warrant, be settled by the issuance of a special use permit.

PROCEDURE AND PREPARATION OF REPORTS.

Foreword.

The instructions under this heading are, generally speaking, common to all kinds of trespass and are placed here to avoid repetition. Occasionally, however, instructions that are applicable only to a particular kind of trespass have been restated briefly hereunder either by way of illustration or for the purpose of clarity. It is therefore important that the forest officers handling the case also consult the more detailed instructions under the heading of the kind of trespass involved. Reference is likewise made in general terms to settlement procedure, which also can be fully understood only by carefully reading the appropriate detailed instructions under the heading "Settlement of trespass cases."

Forest officers should bear in mind also the difficulty of formulating rules which may not, in some instances, be subject to qualification or amplification.

How Trespass is Settled.

In general, trespass is settled in one of the three following ways:

1. Innocent or unintentional trespass is settled in accordance with the instructions under "Civil cases," by requiring the trespasser merely to compensate the United States for actual damages, or, if the facts warrant, timber, occupancy and property trespass involving not more than \$100 may be adjusted in accordance with the instructions covering first-offense trespasses.
2. Willful or intentional trespass, when it is inadvisable, for adequate reasons, to attempt criminal prosecution, is settled in accordance with the instructions under "Civil cases," by requiring payment of actual damages, or of actual plus punitive damages, depending upon the attendant circumstances.
3. Other willful or intentional trespasses and trespasses punishable by fine or imprisonment, are settled in accordance with the instructions under "Criminal cases," and the particular kind of trespass involved, by criminally prosecuting the offender and, in addition, where such action is desirable, by requiring him to pay actual civil damages.

Under the first method settlement may be effected without resorting to legal proceedings if the trespasser will, when requested, pay the estimated damages. Unless voluntary settlement is made within a reasonable time after demand, legal action against the trespasser will be initiated.

The second method is followed in those cases in which the trespasser may properly be charged with intentional trespass but in which the assessment of punitive damages in addition to the actual damages sustained, or in some instances of actual damages alone, will sufficiently penalize the trespasser for his act. If responsibility is fairly established, the

trespasser will ordinarily be willing to make voluntary settlement on this basis in order to avoid criminal prosecution. Punitive damages plus actual damages are imposed mostly, but not exclusively, in intentional grazing trespass where criminal prosecution is not needed to secure the desired result.

Obviously, the third method is followed in all cases in which original prosecution is advisable and there is reasonable ground for believing a conviction can be secured. The payment of civil damages may also be required of the trespasser in this class of cases when the attendant circumstances justify such action.

Reports.

Any forest officer discovering a trespass will, with the least possible delay but after a thorough investigation of the attendant circumstances, prepare a concise report, covering adequately all pertinent points, in accordance with the outline given in Form 874-20, unless otherwise provided in the instructions under the heading of the particular kind of trespass involved. The report will then be submitted promptly to the supervisor for consideration and appropriate action. The location and boundaries of the trespass area and the relative location of other important objects should be shown on a carefully prepared map.

If the trespass was committed on or under color of a claim, a separate report, to accompany the trespass report, should be made upon the claim, in accordance with the outline given in Form 654 or 655.

In all civil cases where voluntary settlement can probably be secured the report, accompanying papers, and map will be prepared in duplicate in supervisors' cases and in triplicate in district foresters', Forester's and Secretary's cases. The original will always be forwarded through proper channels to the officer authorized to effect settlement. The report by the supervisor or other investigating officer in criminal cases prosecuted locally, should ordinarily be in quadruplicate, thus providing a copy for the prosecuting officer and the files of the district forester, supervisor and ranger.

The carbon copy in supervisors' cases is for the ranger's file, and in all other cases the supervisor will be furnished one copy for his files. In cases requiring criminal prosecution through the Department of Justice, and in all civil cases in which it will be necessary to institute legal proceedings, the report and accompanying papers will be prepared in quintuplicate, the original and first carbon copy being transmitted through the usual channels to the Attorney General. The second, third, and fourth carbon copies are for the files of the district forester, supervisor, and ranger, respectively.

Evidence and Witnesses.

The forest officer should start his investigation with an open mind and avoid prepossessions that may lead to error in observation and that

are not warranted by the circumstances so far as known. Unless this is done there will be a natural and unavoidable tendency to construe everything as evidence in support of the preconceived opinion and to disregard or slight everything tending to support the other side. In short, he is likely to see only what he wants to see. The only safe course, therefore, is to attempt to get the true facts regardless of whether they are favorable or unfavorable to the person charged with the trespass.

In civil actions the United States must have the weight of evidence to secure a verdict, and in criminal prosecutions proof beyond a reasonable doubt is necessary to convict. Evidence applying directly and immediately to the fact to be proved has greater weight in legal proceedings than circumstantial evidence. Mere suspicions or guesses will not establish responsibility for the trespass. Generally speaking, hearsay is inadmissible as evidence. However, hearsay occasionally serves a useful purpose in that it furnishes a clue that may lead to the identity of witnesses who can give first-hand testimony. For this reason the investigating officer should not disregard it, but should endeavor to locate and interview any person who claims to have personal knowledge of the facts alleged.

An attempt should be made to get each witness to execute an affidavit containing a concise and accurate statement of the facts to which he can testify, indicating in every instance how the witness obtained his knowledge of the facts. The statement should be phrased as nearly as practicable in the words of the witness, and before signing he should read the statement or have it read to him. When an affidavit can not be obtained, the investigating officer should indicate in a memorandum the facts to which the witness, if willing, will be able to testify. Photographs are competent evidence, and, when properly taken, are recognized as of a high order of accuracy. Therefore, a photograph should be taken of the premises or other object if it can be used to prove any fact in issue. Any damaging admission made orally by the trespasser, his agent, or employees, or by any person identified in interest with him, should be carefully recorded, and, if made in the presence of witnesses, the names and addresses of such witnesses given. Any admission made in writing should also be included in the record.

Manifestly the testimony of a biased witness is not as valuable as that of a witness who is clearly free of bias. Neither is the testimony of a man of bad or doubtful character likely to have as much weight with court and jury as that of a man of good character. It will, therefore, greatly aid the officers who pass upon the sufficiency of the evidence if the investigating officer indicates the general reputation in the community of the witnesses named in the report and states whether the testimony of any of them may be subjected to attack on the ground of bias, due to a personal grudge against the trespasser or to any other reason. It will also prove helpful if there is included in the report a statement of the probable defense of the trespasser, and, if known, the names, addresses, and general reputation of the witnesses he will likely call. Indicate also any evidence available to the United States that may be used to controvert or weaken the testimony that the trespasser will probably offer,

and, if known, any evidence that might be offered by the trespasser to controvert or weaken the testimony of Government witnesses. When an exhaustive investigation has failed to establish responsibility the investigating officer should prepare a statement for his files of the known facts in the case and report to the supervisor his reasons for believing that nothing will be gained by continuing the investigation. It is desirable to keep such a statement since something may unexpectedly develop later that will disclose, or tend to disclose, the trespassers' identity.

Action by Supervisor--Trespasser's Statement.

If upon receiving the report it is the supervisor's opinion that a trespass has been committed, he will in all civil cases, and, if advisable, in criminal cases, inform the trespasser, by registered mail or in person, of the trespass, and that he will be allowed a definite time from receipt of notice in which to make a sworn statement of the circumstances of the trespass and his estimate of the damages, if any, sustained by the Government as a result of the trespass. In all cases where the United States has suffered a loss the trespasser will also be informed that his statement will be considered in the determination of the actual damages resulting from the trespass.

Conference with Trespasser.

Whenever practicable the supervisor should meet the trespasser and talk the matter over with him. No trespass report in which settlement is recommended on a civil basis should be forwarded to the district forester until the trespasser has had an opportunity to present his version of the facts, either orally or in writing. The substance at least of any oral statement of the trespasser should be covered in a memorandum or else incorporated in the report by the supervisor or other officer to whom it is made.

Procedure in Supervisor's Office.

After consideration of the trespasser's statements the supervisor will supplement the forest officer's report by his own findings as to the damage sustained by the United States, and particularly as to the innocence or willfulness of the trespass. He will then send both to the district forester unless the case is one that he is authorized to settle direct in accordance with the instructions under the heading "Supervisors' cases," in the chapter dealing with civil cases, or, unless the instructions under the kind of trespass involved do not require such report. A separate folder appropriately designated will be used for each case and an index card (Form 618) prepared.

Procedure in District Office.

Upon receipt of the papers in the case the district forester will refer them to the office concerned. A separate folder, with the designation thereon, will be used for each case. An index card (Form 618) will be used for each case, upon which will be entered the case designation and

other required notations. The assistant district forester in charge of the office, after having examined the report, will prepare a memorandum containing his estimate of the damage sustained by the United States, his opinion regarding the nature of the trespass, and his recommendations for action.

If the district forester is of the opinion that the facts set out in the reports and papers submitted by the supervisor do not show that a trespass has been committed, and it is impossible to procure additional evidence, the district forester may close the case without referring it to the district assistant to the solicitor. Otherwise the case will, after reference to the district assistant to the solicitor, be handled in accordance with the instructions under the heading "Settlement of Trespass Cases."

Action Upon Report on Claim.

When a trespass report is accompanied by a claims report all the papers will be referred to the office of lands before proceeding with the settlement of the case. If it appears, upon an examination of the claims report in that office, that action should be initiated to protest the claim, the original reports upon the claim will be removed from the trespass file and a copy substituted. A memorandum showing the intended action, if any, upon the claims report will be attached to the trespass report, which will then be returned to the office concerned. Action in the claims case will be taken in accordance with the procedure prescribed under "Claims."

Reference to District Assistant to the Solicitor.

Except in civil and criminal trespasses that the supervisor or other investigating officer are authorized to settle or prosecute directly the district forester will submit the entire case record to the district assistant to the solicitor who will determine the sufficiency of the information to sustain the action recommended.

If, in his judgment, a trespass has been committed, and the action recommended is warranted by the facts shown by the record, the case will thereafter be handled in accordance with the procedure outlined under "Settlement of trespass cases." If he believes that the trespass is not clearly established, or that the amount of the damage is inadequate or excessive, or that there is an absence of material facts, he will so advise the district forester by memorandum, indicating, if necessary, the additional evidence required to complete the case. If the district assistant to the solicitor dissents from the opinion of the district forester, the

latter will take steps to conform to the legal requirements outlined by securing additional reports or evidence, and will again submit the case to the district assistant to the solicitor. Appeals by the district forester from the decisions of the district assistant to the solicitor will be taken in accordance with the instructions on page 12 of the Administrative and Protection Section of the Manual.

SETTLEMENT OF TRESPASS CASES.

Administrative Remedies.

The Forest Service will, in addition to invoking appropriate legal remedies, exercise a reasonable administrative discretion for enforcing collection of actual damages amounting to \$50 or less. In such cases where the sum demanded does not exceed the actual damage and the Assistant to the Solicitor is of the opinion that a trespass is clearly established, the District Forester may authorize the withholding of grazing privileges, special use permits, or commercial timber sales to the trespasser until payment is received.

In no case will free grazing privileges under Regulation G-2 be revoked, free use of timber refused, cost sales restricted, reasonable rights-of-way withheld, or other harsh, arbitrary, or unnecessary action taken to enforce collection.

Administrative action may be taken in any case, including those in which the amount involved exceeds \$50, where a judgment has been secured and execution avoided by fraudulent conveyance or otherwise. In all other cases where the actual damages claimed exceed \$50, administrative action will be taken only when approved by the Secretary of Agriculture upon recommendation of the Attorney General or his assistant, the head of an executive department, or the chief of a bureau of this department. A trespasser may in any case appeal from the administrative action of a District Forester through the Forester to the Secretary.

CIVIL CASES.

REG. T-9. The forest supervisor, when authorized by the district forester, may settle any innocent or unintentional trespass involving a claim for not more than \$300. The district forester may settle any trespass involving a claim for not more than \$3,000. The Forester may settle any trespass involving a claim for not more than \$5,000. Any trespass involving a claim for more than \$5,000 will be referred to the Secretary of Agriculture. All civil trespasses requiring the institution of legal proceedings will be reported through the Forester to the Secretary of Agriculture for reference to the Attorney General for action.

Legal Remedies for Trespass.

The United States has all the legal remedies for trespasses upon its lands that are available to individuals, and invokes the aid of its own courts to enforce them. Among these remedies are: Injunction either

to prevent threatened trespasses or to terminate such as are being committed; action to recover the value of products and resources of the lands converted or injured by trespassers; and prosecutions for violation of statutes defining crimes in relation thereto.

Injunction.

Whenever a threatened or actual trespass on lands of the United States within a National Forest is discovered and resort to the remedy of injunction is necessary, the supervisor will communicate the facts to the district forester, who will consult with the district assistant to the solicitor, and if the latter is of the opinion that injunction can be maintained he will report the facts to the Solicitor for reference by the Secretary to the Attorney General for action.

Whenever application for an injunction is too urgent to admit of delay in ordinary correspondence between the district assistant to the solicitor and the Solicitor, the former will telegraph briefly all the essential facts in the case to the Solicitor, and the Attorney General will be requested to give immediate instructions to the United States attorney to apply for an injunction.

Whenever application for an injunction is so urgent that the interests of the United States would be prejudiced by the delay incident to the course outlined in the paragraph immediately preceding, the district assistant to the solicitor will submit the facts to the proper United States attorney and will request that application be made immediately for an injunction, but as soon as possible thereafter he will advise the Solicitor of his action and of the essential facts in the case in order that the Attorney General may be requested at once to give the necessary instructions to the United States attorney.

The facts on which the injunction is sought should be promptly communicated to the Forester for his information by the district forester.

Supervisor's Cases.

Supervisors may, in the discretion of the district forester, be authorized to accept settlement for any innocent or unintentional trespass in which the claim against the trespasser does not exceed \$300. When so authorized the supervisor need not refer the papers to the district office for review unless he desires the advice of the district forester or assistant to the solicitor. In this event the case will be handled by the district forester. The letter to the trespasser requesting settlement, and the accompanying letter of transmittal (Form 861) will be prepared and signed by the supervisor. If payment is not made within a reasonable time the entire file will be referred to the district office and the case will thereafter be handled in the same manner as are district foresters' cases in which voluntary settlement is not secured.

District Forester's Cases.

Innocent and willful trespasses will be settled by the district foresters if the estimated damage does not exceed \$3,000. The letter to the trespasser requesting settlement will be prepared for the signature of the district forester by the district assistant to the solicitor. Such letter, which will be forwarded through the supervisor, will inform the trespasser of the sum due the United States because of his trespass, as determined by the district forester, and that, upon payment of this amount and the fulfillment of such conditions as may be necessary to protect the National Forest, the case will be closed. A letter of transmittal (Form 861) for the amount due, signed by the district forester, will accompany the letter. If payment of punitive damages is requested, the trespasser should be assured that opportunity to make voluntary settlement is offered merely to enable him to avoid the costs of court proceedings, which otherwise will be initiated.

A promise card will be prepared, and if after the expiration of a reasonable time the payment has not been received, the entire case will be referred to the district assistant to the solicitor, who will write a second letter to the trespasser calling attention to his failure to pay the amount due. If the trespasser fails or refuses after receipt of the second letter to make settlement as required, the papers will be returned to the district forester, who will transmit them to the Forester. After review of the record, the Forester will forward the case to the Solicitor for submission to the Attorney General for the institution of civil suit.

Forester's Cases.

Innocent and willful trespasses, in which the estimated damage exceeds \$3,000 but is not more than \$5,000, will be settled by the Forester. In all such cases the district forester, after adding his recommendations, will submit the record to the district assistant to the solicitor for review. The record, including the comments and recommendations of the district assistant to the solicitor, will then be forwarded to the Forester. In his consideration of the case the Forester will consult with the Solicitor regarding any doubtful points. After the determination of the amount due the United States, the Forester will return the record in the case to the district office with his decision. Upon receipt of the papers in the district office the case will thereafter be handled in accordance with the procedure prescribed for the settlement of district forester's cases, it being indicated in the letter to the trespasser that the settlement requested was fixed by the Forester.

Secretary's Cases.

Innocent and willful trespasses, in which the estimated damage exceeds \$5,000, will be settled by the Secretary. Procedure in the district office will follow that outlined for Forester's cases. When the record is received by the Forester he will, after adding his recommendation, transmit it to the Secretary through the Office of the Solicitor. When the Secretary has determined the amount due the United States the papers will be returned to the district office, through the Office of the Forester,

with his decision. Upon receipt of the papers in the district office the case will thereafter be handled in accordance with the procedure prescribed for the settlement of district forester's cases, it being indicated in the letter to the trespasser that the settlement requested was fixed by the Secretary.

Action by Attorney General.

If the trespasser declines or fails to make voluntary settlement the case record will be forwarded, through the Forester, to the Secretary of Agriculture, so that the facts may be reported to the Attorney General for institution of suit for the recovery of the ascertained damages, together with such exemplary damages as may be awarded by a jury upon consideration of the aggravated circumstances of the case. When it is necessary to report a case to the Attorney General the Solicitor will prepare the letter for the signature of the Secretary.

Compromise of Civil Trespasses.

In every case where a compromise of a trespass is recommended by forest and law officers and approved by the Secretary the Secretary will advise the Attorney General of the proposed compromise and request that the case be settled in accordance therewith.

If a civil action for the recovery of damages has been referred to the Department of Justice, but suit has not as yet been filed, any sum offered in compromise of the total amount of damages claimed can not be accepted by the district assistant to the solicitor or by forest officers. Ultimately such cases are referred by the Attorney General to the Secretary of the Treasury. (Sec. 3469, R. S.) Pending the action outlined in the preceding paragraph and the acceptance or rejection of the offer of settlement, the Secretary of the Treasury has requested that the sum offered shall be deposited in the proper United States depository, to be placed to the credit of the Secretary of the Treasury, Special Account No. 5. When such a deposit is to be made as a compromise offer of settlement, the office handling the case will furnish the district fiscal agent with a brief statement of the facts indicating the amount offered and, if known, the date payment is to be made. This information is necessary in order that the district fiscal agent may properly identify the deposit when it is reported by him to the Treasury. The fiscal agent will furnish the office concerned with a copy of his letter to the Treasury for filing in the case folder.

If a civil action for the recovery of damages has been referred to the Department of Justice but suit has not as yet been filed, and the sum offered is for the full amount of damages claimed, the district assistant to the solicitor after conferring with the United States attorney and where agreeable to him, may place the amount in the hands of the district fiscal agent to be deposited to the credit of Forest Service receipts. In all such cases the district assistant will then at once advise the Solicitor of the offer of settlement and disposition of the sum offered, in order

that the Secretary may inform the Attorney General of the action taken and request that the case be closed.

If suit for the recovery of damages has been filed, any sum offered in compromise or settlement of the suit will be deposited with the clerk of the court pending final action as outlined above.

Fiscal Agent to be Notified in Litigated Cases.

At the conclusion of every litigated case the district office concerned will furnish the Fiscal Agent two copies of the letter from the Solicitor to the Forester in which the final action taken is indicated so that he may arrange, if necessary, to have the damages paid by the trespasser credited to the "Forest Reserve Fund."

Fiscal Agent's Procedure.

If upon inquiry the Fiscal Agent finds that the damages paid by the trespasser have not been properly credited he will at once ascertain from the clerk of court the date and number of the certificate of deposit, name of depositor, the officer in whose name deposited, and the fund to which credited. He will then prepare a letter to the Comptroller General, General Accounting Office, Civil Division, for the signature of the Secretary, explaining that the payment was erroneously credited and requesting adjustment through issuance of transfer and counter warrants. Such letter will be forwarded through the Forester with a carbon copy attached for his files.

Upon receipt of information that any such payment has been credited to the "Forest Reserve Fund," the Fiscal Agent will notify the office concerned by memorandum in duplicate in order that the case may be closed if nothing else remains to be done by the trespasser. The office receiving the memorandum will transmit the duplicate copy to the proper Supervisor for his files.

CRIMINAL CASES

Reg. T-10. Criminal trespasses, except those prosecuted under State laws and Federal cases requiring immediate action or of minor importance, will be reported through the Forester to the Secretary of Agriculture for reference to the Attorney General for action.

Criminal Prosecution.

Settlement or institution of civil suit to recover damages arising from a trespass in a National Forest does not bar a criminal prosecution for the trespass and no settlement should be accepted on condition that a criminal prosecution will not be instituted.

If the trespass is one in which action should be taken promptly and involves a violation of a Federal law or a regulation of the Secretary of Agriculture it may be taken up direct by the Supervisor or other investigating officer with the United States Commissioner or the United States

District Attorney with a view to getting criminal proceedings started. Similarly, any trespass that it is deemed expedient to prosecute in the State courts on the ground that it violates a State law may be taken up direct with the local prosecuting attorney, justice of the peace, or other State officer having jurisdiction. Any case of a doubtful or complex character and all cases of importance in which there is no pressing need for immediate or summary action will be reported through the Forester to the Secretary of Agriculture and by him to the Attorney General if it is determined that institution of criminal proceedings are to be requested. Any Forest officer who is in doubt as to his authority or any detail of procedure hereunder should request his superior officer for definite instructions.

Arrest.

All Forest officers have power to arrest without warrant any person whom they discover in the act of violating a regulation of the Secretary of Agriculture, or any Federal or State law applicable to the National Forests.

If the act constituting a violation of any such regulation or Federal law is committed outside the view of a Forest officer he has authority to secure a warrant for the arrest of the offender from a United States Commissioner, or, if one is not convenient, from a justice of the peace, and use it as the visible sign of the right to arrest. When it is desired to make an arrest in such cases an affidavit setting forth the facts must be sworn to before an officer authorized to administer oaths in criminal cases, such as a justice of the peace, or clerk or judge of a court. An affidavit sworn to before a Forest officer or notary public is not sufficient basis for procuring a warrant of arrest.

If the trespass is a felony (an offense punishable by imprisonment for more than one year) and the Forest officer has reasonable grounds for believing it has been committed and by a certain person, he may arrest such person without a warrant wherever found, even though he did not see the trespass committed.

After an arrest has been made in a Federal case the person arrested must be taken before the nearest United States Commissioner for commitment. In cases arising under State laws the arrested person should be taken before the nearest justice of the peace or judge having jurisdiction for commitment or trial.

Action by Ranger Where Arrest is Necessary.

In all trespass cases where immediate action is necessary in order to protect the forest from damage or to prevent the escape of the trespasser the ranger will place the trespasser under arrest if he is detected in the act of committing trespass, or if not so detected will first procure a warrant for his arrest; will notify the supervisor at once, advising him of the need of immediate action, of the evidence against the trespasser,

and of the United States Commissioner or other judicial officer before whom the hearing will be held. He will also secure evidence upon all of the points mentioned under "Reports" and "Evidence and Witnesses," page 27. Immediately after an arrest is made he will take the trespasser before the United States Commissioner or other proper judicial officer, swear to a complaint, and in the absence of the district assistant to the Solicitor, represent the Forest Service at the hearing. In the absence of the United States Marshal, the constable or other peace officer of the court, the ranger will make such disposition of the prisoner as may be ordered by the court. After the case has been acted upon by the Commissioner or other judicial officer the ranger will submit a full report of the case to the supervisor, including a statement regarding the decision and rulings of the Commissioner or other judicial officer.

Action by Supervisor When Arrest is Necessary.

The supervisor upon receipt of the ranger's preliminary report will at once notify the district forester, in order that the district assistant to the Solicitor may attend the hearing if possible. The supervisor should endeavor to attend the hearing, or, failing to be present, should give the ranger full instructions regarding the action he is to take. As soon as the complaint has been acted upon and the ranger has submitted full reports the supervisor should consider, approve, and record them in the proper manner, and wherever necessary forward all papers in the case to the district forester for submission to the district assistant to the Solicitor, adding such recommendations as he may care to make and a full statement of all rulings and decisions of the Commissioner or other judicial officer. The case will then be considered by the district assistant to the Solicitor and if the evidence is sufficient and complete he will prepare a memorandum to that effect for the district forester, who will forward the case to the Forester if such action is necessary.

CLOSURE OF CASES.

When the trespasser has paid the damages assessed against him or the fine imposed by the court, and, in timber trespass, has placed the cutting area in a satisfactory condition, the case will be closed. However, no litigated case will be closed until notification is received from the Fiscal Agent that the damages paid by the trespasser have been credited to the "Forest Reserve Fund."

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